

S/N 10/684,865

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s): Rida M. Hamza et al.

Examiner: Jessica Roberts

Serial No.: 10/684,865

Group Art Unit: 2621

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Customer No.: 92689

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Title: MULTI-STAGE MOVING OBJECT SEGMENTATION

REPLY BRIEF UNDER 37 CFR § 41.41

Mail Stop Appeal Brief- Patents
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This Reply Brief is submitted in response to the Examiner's Answer of March 25, 2010.

The Appellants gratefully acknowledge the withdrawal of the rejection of claims 1-30 under 35 U.S.C. § 112, 1st ¶, and the rejection of claims 1 and 16, and their respective dependent claims, under 35 U.S.C. § 101.

The Final Office Action rejected claim 27 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, the Final Office Action contended that the specification included carrier wave signals in the definition of a "computer readable medium." The Appellants' Principal Brief pointed out that claim 27 recites a system, not a computer readable medium. In response, the Examiner's Answer contends that claim 27 recites non-statutory subject matter because it is directed to software. The Appellants respectfully disagree, and respectfully seek the reversal of the rejection of claim 27 under 35 U.S.C. § 101.

Claim 27 recites a "means for receiving video images of the monitored area." Such means, as disclosed in the specification, include a camera 220, an operation controller 110, and a processing unit 202. As such, the claim is tied to one or more machines, which are clearly statutory subject matter as promulgated by 35 U.S.C. § 101. The Appellants respectfully request the reversal of this rejection.

Regarding the rejection of the claims under 35 U.S.C. § 103(a), the Appellants pointed out in their Principal Brief that the claims recite that a "first color pixel distribution is pre-selected, prior to receiving the frames of the area, as a function of the block of pixels that does

not represent any motion of interest.”¹ The Appellants further pointed out that contrary to the contentions in the Final Office Action, neither Gu nor Parker disclose this feature, and the Appellants respectfully submitted that as a result a *prima facie* case of obviousness was not established.

Regarding the Gu reference, the Appellants in their Principal Brief pointed out that Gu relates to color correction systems, whereas the claimed subject matter relates to motion detection in surveillance systems. The Appellants’ Principal Brief then respectfully submitted that the rationale in the Final Office Action for combining Gu with Pavlidis cannot stand scrutiny. Specifically, the rationale of the Final Office Action that combining Gu with Pavlidis would provide for efficient color processing of color images misses the mark. Gu is directed to color correction in particular, not color processing in general, and cannot properly be applied to Pavlidis, which is a surveillance system that uses color for identification purposes only. It is not a proper rationale to cite a reference that deals with a specific technology, generalize the teachings of that reference, and then conclude that the reference is applicable to a different technology.² Indeed, any correction or other alteration of color in Pavlidis would change the data relating to the objects of a scene, thereby seriously detracting from the ability of the Pavlidis surveillance system to properly identify objects in the scene.³

¹ As noted in the Appellants’ Principal Brief, this is useful when an operator knows that there will be no motion of interest in a particular portion of the image, such as in the sky. The operator can then preselect the blue color of the sky so as to not expend processing power for that portion of the image.

² See *In re Lee*, 277 F.3d 1338, 1342-44 (Fed. Cir. 2002) (There must be objective evidence and specific factual findings with respect to the motivation to combine references). See also *Ecolochem v. Southern California Edison Co.*, 277 F.3d 1361, 1372 (Fed. Cir. 2002) (broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence of obviousness); *Rolls-Royce, PLC v. United Technologies Corporation*, Appeal No. 2009-1307 (Fed. Cir. May 5, 2010) (To preclude hindsight in this [obviousness] analysis, this court flexibly seeks evidence from before the time of the invention in the form of some teaching, suggestion, or even mere motivation (conceivably found within the knowledge of an ordinarily skilled artisan) to make the variation or combination).

³ MPEP 2143.01, Part V, p. 2100-140—The proposed modification to a cited reference cannot render the prior art unsatisfactory for its intended purpose.

In response to these points in the Appellants' Principal Brief, the Examiner's Answer simply repeats in conclusory fashion that it would have been obvious to combine Gu with Pavlidis to provide improved efficient signal processing of color images, without addressing the point that Pavlidis is a surveillance system, not a color correction. Therefore, the statements in the Examiner's Answer that Gu discloses or relates to automated color correction, color parameter statistical data, processing of color signals, the use of color correction in the television industry, and the use of color cameras during the day, do not address the issue of the lack of a reasonable rationale to combine the color correction of Gu with the surveillance detection of Pavlidis. And perhaps more importantly, these statements in the Examiner's Answer do not address the issue at hand--that the claims recite a feature of pre-selecting a color pixel distribution because it does not represent any motion of interest, and that this feature is not disclosed by Pavlidis or Gu, either alone or in combination.

The Examiner's Answer further points out that the Gu reference relates to emphasizing a particular color in a scene. With this, the Appellants have no qualms. However, once again, this is not the claimed feature of a pre-selection of a color pixel distribution as a function of a block of pixels that does not represent any motion of interest. Moreover, as pointed out above, color alteration of the Pavlidis surveillance system would decrease the effectiveness of that system.

Regarding the Parker reference, the Final Office Action contends that Parker discloses that a "color pixel distribution is pre-selected," and the Examiner's Answer states that it relies on Parker's teaching of the predetermined skin color for the technique of having a pre-determined specific color space prior to an image. Being that as it may, the claims recite not just a pre-selection or pre-determination of color, but a pre-selection of a color pixel distribution as a function of a block a pixels that does not represent any motion of interest. Neither Parker, nor any of the other cited references, either alone or in combination, disclose this recited feature. Consequently, the Appellants respectfully submit that a *prima facie* case of obviousness has not been established, and they respectfully seek the reversal of the rejection of the claims.

In summary, the claims recite a “first color pixel distribution [that] is pre-selected . . . as a function of the block of pixels that does not represent any motion of interest.” The Pavlidis reference, which relates to surveillance and motion detection, does not disclose this feature. And combining a reference directed to color correction, such as Gu, or a reference that is directed to identifying human skin in video data, such as Parker, simply does not disclose pre-selecting a color pixel distribution that does not represent any motion of interest.

Consequently, the Appellants respectfully submit that neither the Final Office Action nor the Examiner’s Answer has established a *prima facie* case of obvious, and the Appellants respectfully request the reversal of the rejection of the claims.

SUMMARY

For the reasons argued above, claim 27 was not properly rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter, and claims 1-26 and 28-30 were not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Pavlidis (Urban Surveillance Systems), in view of Monroe (US 2003/0025599), in view of Flickner (US 2003 0107649), and further in view of Gu (US Pat. No. 5,874,988), and claim 27 was not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Monroe (US 2003/0025599), in view of Pavlidis (Urban Surveillance Systems),), in view of Flickner (US 2003 0107649), and further in view of Gu (US Pat. No. 5,874,988).

It is respectfully submitted that the art cited does not render the claims obvious, and that the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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